

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

NATHANIEL HOWARD MOONE (#1190456),

Petitioner,

v.

ACTION NO. 2:22cv135

**HAROLD W. CLARKE, Director,
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Petitioner challenges his 2016 state convictions in the Arlington County Circuit Court for robbery and attempted robbery. As a result of the convictions, petitioner was sentenced to serve a combined total of 15 years in prison.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. Because Petitioner's claims are unexhausted and procedurally defaulted or otherwise barred from federal review, the Magistrate Judge's Report and Recommendation filed December 2, 2022 recommends dismissal of the petition with prejudice. The Report and Recommendation advised the parties of their right to object and the time limit for doing so. The court has received no objections, and the time for filing objections has now expired.¹

¹ On February 22, 2022, more than two months after the expiration of the time for objections, Petitioner filed a motion for extension of time to file objections. ECF No. 25. Petitioner's motion does not establish good cause or excusable neglect so as to justify an out-of-time filing. *See Fed. R.*

“[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72, Advisory Committee’s Note). Finding no clear error, the Court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed December 2, 2022, and it is therefore **ORDERED** that Respondent’s Motion to Dismiss (ECF No. 16) be **GRANTED**, and that the Petition (ECF No. 5) be **DENIED** and **DISMISSED** with prejudice.

Finding that the basis for dismissal of Petitioner’s § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a “substantial showing of the denial of a constitutional right,” a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

Civ. P. 6(b)(1). Accordingly, the Motion for Extension of Time (ECF No. 25) is **DENIED**.

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.

Norfolk, Virginia
March 2, 2023

/s/
ARENDAL WRIGHT ALLEN,
UNITED STATES DISTRICT JUDGE